IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.763 of 1998
and
Crl.R.C.No.991 of 1998

In Crl.A.No.763/1998

State by
The Sub-Inspector of Police,
Arcot Town, rep. By
Public Prosecutor,
High Court, Madras .. Appellant/Complainant

vs.

Vaiyathrasu .. Respondent/Accused

In Crl.R.C.No.991 of 1998

Tamil Nadu Electricity Board,
Rep. By its Assistant Executive Engineer,
Arcot-632 503. .. Petitioner/PW1

Vs.

1.Vaiyathu Arusu

2.State by
The Inspector of Police,
Arcot Town Police Station. .. Respondents/Accused

Prayer:- This Appeal and Revision have been preferred against the judgment dated 8.6.1998 in C.C.No.274 of 1991 on the file of the learned District Munsif-cum-Judicial Magistrate, Arcot.

In Crl.A.No.763 of 1998

For Appellant : Mr.V.R.Balasubramanian
Additional Public Prosecutor
For Respondent : No appearance

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In Crl.R.C.No.991 of 1998

For Petitioner :Mr.N.Muthuswami

For Respondents :Mr.V.R.Balasubramanian
Additional Public Prosecutor

COMMON JUDGMENT

This appeal arises out of the judgment in C.C.No.274 of 1991 on the file of the Judicial Magistrate, Arcot. This is against the order of acquittal.

2.According to the prosecution, on 19.4.1991 at about 5.00 pm when the officials of the Electricity Department had conducted inspection of the service connection No.2457 in Door No.22/A in Yogalingam street, the accused tampered with the meter thereby causing a loss of Rs.86,950/- to the Electricity Department thereby committing an offence under Section 29 of the Indian Electricity Act. The accused has also been charged under section 44(e) of the Indian Electricity Act for causing damage to the MRT seal in the meter by means of artificial fire thereby committing theft of electricity.

3.After taking cognizance of the offence, the learned Judicial Magistrate issued summons to the accused and on his appearance copies under Section 207 of Cr.P.C., were furnished to the accused and when the charges were explained to the accused and questioned the accused pleaded not guilty. On the side of the prosecution, P.W.3 to P.W.9 were examined and Ex.P.1 to Ex.P.13 were exhibited and M.O.1 to M.O.3 were marked.

4.P.W.1 is the Assistant Executive Engineer of Electricity Board. According to him, while he was working as an Assistant Engineer during the relevant point of time, P.W.4-Ruthran came to the office on 19.4.1991 at about 1.00 am and preferred a complaint that there was a fire in service connection No.2457 and immediately P.W.3-lineman rushed to the place of fire. After disconnecting the electricity supply to the service connection No.2457 and after noting the damages caused to the meter, he had informed the Assistant Engineer Thiru.G.Krishnamoorthy(P.W.2) on the following morning. P.W.2-Krishnamoorthy visited the place of occurrence at about 10.00 am. Ex.P.1 is the complaint preferred by P.W.1. According to P.W.1, the fire was not an accidental one. The place of accident was again inspected by him on 20.4.1991 at about 10.00 am in the presence of the accused. Finding some discrepancies in the meter reading, he gave Ex.P.1-complaint to the Sub-Inspector of Police, crime branch, Arcot Police station and that the Sub-Inspector of Police inspected the place of occurrence at about 5.00 pm on the same day and seized the damaged meter, fuse carrier and burnt meter board. He would suggest that if the fire is

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an accidental one then there is no possibility for the meter to fall directly from the meter board. He would depose that the service connection was in the name of Yogalingam and that the accused got the connection after the death of one Sambasiva Chetiar under partition. According to him, due to the tampering of the meter the loss occurred to the electricity board comes to Rs.1,26,972/-. Ex.P.3 & Ex.P.4 are the electricity consumption card in the name of Yogalingam. He has identified M.O.1 as the meter and M.O.2(series) are the three fuse carries and M.O.3 is the meter board, seized by the police from the place of occurrence.

5. P.W.2 is the then Junior Engineer of Arcot during the relevant period. He has corroborated the evidence of P.W.1. He had visited the place of occurrence at about 10.00 am on 20.4.1991. Ex.P.5 is the statement recorded by him from the accused Vaiyatharasu. He would depose that at the time of inspection of the meter at about 4.00 pm, the accused was not present there.

6. P.W.3-Sankaran is a lineman by profession, who was on night duty on 19.4.1991. According to him, as per the instructions received from his higher officials he has disconnected the electricity connection to service connection No.2457 at 1.00 am on 19.4.1991 and visited the place of occurrence along with the engineer and found the burnt meter board and that the police seized the material objects like meter board, fuse carrier etc.

7. P.W.4 would depose that at about 1.00 am on 19.4.1991 he saw flames of fire emanating from the rice mill and he immediately went and informed the lineman. But subsequently since he has not supported the case of the prosecution he was treated as hostile witness.

8.P.W.5 also followed the suit of P.W.4.

9.P.W.6 is the VAO, who has given Ex.P.8-certificate to show that the rice mill belongs to the accused. He is a witness in Ex.P.6-observation mahazar and Ex.P.7-recovery mahazar.

10.P.W.7 is the Sub-Inspector of Police, who has registered the case in Cr.No.168 of 1991 of Arcot Police Station under Section 3a(1) and 41(1) c of the Indian Electricity Act. Ex.P.9 is the copy of the FIR. The case was registered on the basis of the complaint preferred by P.W.1. He has visited the place of occurrence and prepared Ex.P.6-observation mahazar and had drawn Ex.P.10-rough sketch. The material objects seized from the place of occurrence were sent to the Court under Ex.P.11-form 95. He has arrested the accused on 20.4.1991 at about 9.00 pm and produced him before the Judicial Magistrate for judicial custody. After completing the formalities, he has filed the charge sheet against the accused on 29.11.1991. Ex.P.12 is the chemical analyst's report received from the Forensic Science Laboratory in respect of the material objects seized and sent for chemical examination.

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11.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused would deny his complicity with the crime. After going through the evidence both oral and documentary let in before the trial Court, the learned trial Judge has come to the conclusion that the charges levelled against the accused has not been proved beyond any reasonable doubt and accordingly acquitted the accused from all the charges levelled against him. Aggrieved by the findings of the learned trial judge, the State has preferred this appeal and Electricity Department has preferred this revision.

12. Now the point for determination in this case is whether the findings of the trial Court is perverse in nature to warrant any interference from this Court?

13.The Point:- One of the grounds under which the learned trial Judge has acquitted the accused is that the prosecution has failed to prove that the accused is the owner of the electricity service connection No.2457, which was sanctioned for a rice mill. The prosecution relies on Ex.P.8-certificate issued by P.W.6-VAO to show that the accused is the owner of the rice mill to which service connection No.2457 has been assigned. A perusal of Ex.P.8-certificate will go to show that the service connection No.2457 belongs to late P.T.Yogalingam Chettiar and the accused is a lessee for the rice mill in Door No.22/A to which electricity service connection No.2457 has been assigned. To show that the accused is a lessee of the rice mill in door No.22/A wherein the electricity service connection NO.2457 has been allotted to, the prosecution has not adduced any documentary evidence like lease deed. According to P.W.1 one Ruthran has noticed the fire in the said rice mill, who in turn had informed the same to the junior engineer on 19.4.1991 at about 1.00 pm. But P.W.4-Ruthran has not supported the case of the prosecution and hence the learned Assistant public Prosecutor has treated him as hostile witness. According to P.W.4, even though he was treated as hostile witness, had seen the fire in the rice mill at about 1.00 am on 19.4.1991 and had informed the lineman. But according to P.W.3-lineman both P.W.4 and the accused came to the office on 19.4.1991 at 1.00 am and informed about the fire in the rice mill. The case of the prosecution that the damage caused to the meter for the service connection No.2457 in the rice mill was not due to an accidental fire but the accused in order to screen the offence of theft of the electricity had purposely caused fire to the electricity meter board service connection No.2457 in the rice mill. The material objects seized from the place of occurrence have been sent to the Forensic Science Laboratory for chemical examination and the chemical examination reports have been marked as Ex.P.12 & Ex.P.13. P.W.9 is the author of Ex.P.13-report. P.W.9 in his evidence has deposed that since the burnt meter board was not sent for chemical analysis, he could not give any final opinion to the fact whether the fire is an accidental or artificial one. The evidence of P.W.9 and his report Ex.P.13 cuts at the root of the case of the prosecution that the fire in the rice mill having service

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connection No.2457 is an artificial fire caused by the accused. Relying on the evidence of P.W.1 as to his ignorance regarding form-7 intended for the service connection No.2457, to show when actually the meter and the wire were fixed for service connection No.2457, the learned trial judge has observed in her judgment that the prosecution has failed to prove whether the fire broken out in the meter is an accidental fire or an artificial fire. Further there is no test report for the meter was also filed to show when the meter was fixed for service connection No.2457 to rule out the possibility of any short circuit accidental fire in service connection No.2457. So under such circumstance, I do not find any perverseness in the findings of the learned trial judge to warrant any interference from this Court. Point is answered accordingly.

14. In fine, the appeal is dismissed confirming the findings of the learned trial judge in C.C.No.274 of 1991 on the file the Judicial Magistrate, Vellore. Consequently, the revision petition preferred by P.W.1 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

1.The District-cum-Judicial Magistrate,
Arcot, Vellore.

2.-do-The Chief Judicial Magistrate, Vellore.

3.The Public Prosecutor, High Court, Madras.

4.The Inspector of Police,
Arcot Town Police Station.

1 cc To Mr.G.Rangarajan, Advocate, SR.41390.
1 cc To Mr.N.Muthuswamy, Advocate, SR.41704.

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